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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 526 OF 2024

Umesh Champaklal Shaha And Anr.Applicants
V/s
Markandey Malayya MithapelliRespondent

Mr.Akshay Kamble a/w. Kshitij Madekar a/w. Neha Patil, Pritesh Bodekar, Ms.Trupti Poojary i/b Vivaka Partners, for Applicants.
None for Respondent.

CORAM : M.M. SATHAYE, J.

DATE : 19th MARCH, 2025

P.C. :

1. By this revision application under Section 115 of the Civil Procedure Code, 1908, the Applicants/Defendants/Tenants are challenging the Judgment and Decree dated 25.06.2024 passed by the District Judge-19, Pune in Regular Civil Appeal No. 129 of 2021, by which the Judgment and Decree dated 03.04.2021 passed in Civil Suit No.306 of 2013 by the 7th Additional Judge, Small Causes Court, Pune is confirmed. These two judgments are hereinafter referred to as judgments of the Appellate Court and Trial Court.

2. The matter arises out of the Maharashtra Rent Control Act, 1999 ("the said Act", for short). Admittedly, the Respondent is a landlord of 'the suit premises' which are 612.5 sq. ft. on the 2nd floor and 200 sq. fr. on the 3rd floor of a building situated at CTS No.570, Raviwar Peth, Pune, more particularly described with boundaries in

paragraph No.1 of the plaint.

3. The suit was filed on various grounds including non-user, *bona-fide* requirement and default (arrears of rent). The Applicants appeared in the suit and filed their written statement contesting the suit. Issues were framed. The Respondent/Plaintiff entered witness box as PW-1 and also examined three more witnesses including brother Narsayya Mithapelli as PW-2. The Applicant No.1 Umesh examined himself. Both sides relied upon documentary evidence. The learned Trial Judge after hearing both sides and on appreciation of the evidence decreed the suit thereby directing the Applicants to hand over vacant possession of the suit premises to the Respondent. The Applicants were also restrained from sub-letting or creating third party interest or transferring the suit premises in any manner till its possession is hand over to the Respondent/Plaintiff. The Applicants challenged the judgment and decree of the Trial Court by filing aforesaid appeal in the District Court. The Appellate Court by impugned judgment and decree has confirmed the decree on the ground of *bona-fide* requirement alone. It is in these facts and circumstances that the Applicants are before this Court, challenging the judgment and decree of the Appellate Court.

4. Learned counsel Mr. Madekar appearing for the Applicants, made submissions with all the persuasion at his command. He submitted that the whole case of the Respondent landlord is based on bald assertion made in the examination-in-chief about alleged *bona-fide* requirement and there is no evidence in support of the said case. Inviting this Court's attention to the cross-examination of the

Respondent, it is submitted that the Respondent has admitted to owning a ground +2 building at 39, Gultekadi and another property at 1151, Bhavani Peth. It is submitted these properties were not disclosed in the plaint and this reflects upon the intention of the Respondent landlord. It is further submitted that in the cross-examination of the PW.No.2 Mr. Narsayya, real intention of the landlord is exposed in as much as, the said witness has admitted that the landlord intends to demolish the suit structure for construction of a new building.

5. He has relied upon the following judgments of (i) *Mattulal Vs. Radhe Lal (1974) 2 SCC 365* and (ii) *Kishan Chand Vs. Jagdish Pershad & Ors. (2003) 9 SCC 151* in support of his submissions.

6. Apart from the said submissions, learned counsel for the Applicants has also relied upon an extract of Ministry of Corporate Affairs dated 18.03.2025 and 2 Linked-in profiles (which are admitted not part of the suit record) to support his submission that Mr. Tejas Mithapelli, the son of the landlord, who is stated to be running his business in leave and license premises, that company for which he is working as Director, is not functioning and company status is shown as Strike-Off. Two Linked-in profiles of Ms. Prajakta Mithapelli and Gaurang Mithapelli who are daughter and nephew of the Respondent landlord are relied upon to suggest that the said persons from Respondent's family are already employed are this indicates that there is no *bona-fide* requirement as asserted by the landlord. It is not necessary to consider documents tendered across bar in this Court first time in a revision application, in their absence

on record of the Trial and Appellate Court and without application for additional evidence being made. However, it is deemed fit to deal with them appropriately.

7. I have considered the submissions and perused the record.

8. At the outset, it is necessary to note that perusal of the plaint paragraph No.4 would show that it is asserted by the Plaintiff that there are as many as 23 family members in the family of the landlord and considering their age and education, the suit premises are bona fide required for running business/profession of landlord's family members. The Respondent has re-iterated this requirement in his examination-in-chief. It is seen that when the affidavit of examination-in-chief is filed, it was stated that Respondent's son Tejas was required to use a premises on leave and license and it was stated in support of the case that if the suit premises are available, the son of the family will not be required to go and work from a leave and license premises. It is further asserted by the Respondent that his daughter Prajakta has completed MBA Finance indicating that she is a well educated person. It is further stated that the Respondent's nephews Mr. Gaurang and Mr. Akshay are also MBA Graduates. It is further stated that since there is a shortage of place with the Respondent's family, the said premises are required and if suit premises are made available, any of the said three persons from Respondent's family, being the next generation, would be able to use it for conducting their business/profession. No damaging cross-examination to this assertion on oath is brought to the notice of the Court. The availability of the residential premises at 39, Gultekadi

and 1151, Bhavani Peth where the Respondent landlord has admitted to have residential premises, will have no effect about the requirement as pleaded in the plaint, in as much as, the requirement is pleaded for conducting business or profession for the family members and therefore availability of the residential premises, can have no bearing on the said issue. In that view of the matter, the alleged non-disclosure of these residential premises, cannot be held to be fatal to the case of the Respondent about *bona-fide* requirement.

9. So far as the submission of the learned counsel for the Applicants, made across the bar first time in this revision application based on the Respondent's Son's company status employment of Respondent's daughter or nephew, suffice it to say that it is settled law that the landlord or his family members are not expected under the law to sit ideal at home waiting for the litigation initiated by their earlier generation to fructify till suit premises become available. The family members such as sons and daughters and nephews of the landlord, if they have moved on with their life and are engaged in businesses or services elsewhere, that *per se* will not have any damaging effect on the requirement as pleaded by the Respondent on the date of suit. The material sought to be relied upon by the Applicants in this Court in the form of Linked-in profiles and the company's status, as indicated above, is not sufficient to hold that the requirement as pleaded has been completely eclipsed.

10. The next submission of the learned counsel for the Applicants that PW-2 has admitted to real intention of the landlord about

demolishing the structure in which suit premises are situated, it is sufficient to observe that present suit is filed under provisions of section 16(1)(g) of the said Act and not under section 16(1)(i) of the said Act. Under section 16(1)(i), a specific ground is available for the landlord to seek eviction of the tenants where premises are reasonably and *bone-fide* required for immediate purpose of demolition for the purpose of erecting new building. Since the ground on which parties have led evidence and both the Trial Court and Appellate Court have considered the rival submissions under Section 16(1)(g) of the said Act, stray admission of PW-2 about the demolition of the building, cannot be said to be fatal to the ground of bona-fide requirement as canvassed in plaint.

11. It is further submitted relying on sections 101 and 102 of the Indian Evidence Act, 1872 as also on the judgment of the Hon'ble Supreme Court in *Varada Bhavanarayana Rao Vs. State of Andhra Pradesh & Ors. [1963 SCC OnLine SC 118]* that whoever asserts the existence of certain facts must prove that those facts exist and burden of proof lies upon the person who would fail if no evidence at all were given by either side. There is no dispute about this proposition of law. It is only trite that the Plaintiff must stand or fall on his own feet. In the present case, apart from the consideration by the Trial Court and Appellate Court, this Court has also gone through the affidavit of examination-in-chief and cross-examination of the Respondent landlord for being satisfied objectively about the case made out. Having considered the oral and other evidence led by Respondent landlord, I have no hesitation to hold that the

requirement of the suit premises as pleaded is sufficiently supported and standing the test of cross-examination. In that view of the matter, the said submission and judgment would not advance the case of the Applicants.

12. Viewed in light of what is observed above, the judgments of the Trial Court as well as Appellate Court show that the Trial Court in paragraph No.23 to 18 of its judgment has considered the evidence of the Respondent landlord about *bona-fide* requirement and the Appellate Court has considered it in paragraph Nos.16 to 19. The aspect of suitability of the suit premises as well as location and potential thereof has also been asserted by the Respondent landlord in his evidence, which is duly considered by both the Trial and Appellate Court.

13. No argument was advanced about comparative hardship. Needless to mention that the aspect of hardship is also held in favour of the Respondent landlord by the Appellate Court.

14. Lastly, about the other judgments relied upon by the Applicants. Relying upon paragraph 12 of the judgment of *Mattulal Vs. Radhe Lal (supra)* it is submitted that the test that must be applied is an objective test and mere assertion on the part of the landlord about requiring non-residential accommodation will not be decisive. As already indicated above, there is no damaging cross-examination on the number of members of the Respondent's family or existence of the son, daughter or nephew who are educated. In short, there is nothing to disbelieve the assertion made in the

affidavit of examination-in-chief by the Respondent landlord about the size of the family, existence of the next generation and need to to use the suit premises if available. In that view of the matter, even after considering the evidence objectively, this Court is of the opinion that bona fide requirement is proved.

15. So far as the judgment of *Kishan Chand (supra)* relied upon by the Applicants is concerned, the same is about concealment of the material fact by the landlord. It is already held above that the alleged concealment of residential premises, has no bearing on the requirement of suit premises required for business or profession of the family members of the landlord.

16. In the aforesaid facts and circumstances and for the reasons recorded above, the impugned judgment and decree does not suffer from any perversity or jurisdictional error. There is concurrent finding of the fact about *bona-fide* requirement by the Trial Court and the Appellate Court. It does not require interference in the limited jurisdiction this Court exercises under Section 115 of the Civil Procedure Code, 1908.

17. Civil Revision Application is accordingly dismissed with no order as to cost.

18. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)